

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PACE-O-MATIC, INC.,	:	
	:	NO. 20-CV-292
Plaintiff,	:	
	:	JUDGE WILSON
v.	:	
	:	MAGISTRATE JUDGE
ECKERT, SEAMANS, CHERIN &	:	SAPORITO
MELLOTT, LLC, MARK S.	:	
STEWART and KEVIN M.	:	
SKJOLDAL,	:	
	:	
Defendants.	:	ELECTRONICALLY FILED

STIPULATED ORDER

WHEREAS, Plaintiff Pace-O-Matic, Inc. (“POM”) filed a Motion for Preliminary Injunction and supporting brief on March 24, 2020 (ECF Nos. 12, 13) and then an Amended Motion for Preliminary Injunction on September 17, 2021 (ECF No. 157) and supporting brief on October 1, 2021 (ECF No. 160), seeking to enjoin Defendants, Eckert Seamans Cherin & Mellott, LLC, Mark S. Stewart and Kevin M. Skjoldal (collectively, “Eckert”) from continuing to engage in representations which POM contends constitute a prohibited conflict of interest and breach of the fiduciary duty of undivided loyalty;

WHEREAS, Eckert filed a brief in opposition to POM’s motion for preliminary injunction on April 21, 2020 (ECF No. 21) and a brief in opposition to POM’s amended motion for preliminary injunction on October 22, 2021 (ECF No.

164), denying any conflict of interest or breach of fiduciary duty;

WHEREAS, pursuant to the Stipulation entered as a Court Order on May 18, 2020 (ECF No. 27), the parties initiated discovery concerning POM's motion for preliminary injunction;

WHEREAS, Eckert filed sworn declarations (ECF 112-2, 112-3) asserting that no one on behalf of Eckert discussed a conflict waiver with anyone at POM and agreeing to withdraw from certain representations adverse to POM;

WHEREAS, the Honorable Joseph F. Saporito, Jr. issued a Memorandum and Order on November 16, 2021 concerning the production of certain documents subject to an ongoing discovery dispute and ordering the production of those documents;

WHEREAS, the November 16, 2021 ruling is the subject of an appeal pending before the Honorable Jennifer P. Wilson;

WHEREAS, discovery is ongoing; and

WHEREAS, the parties have agreed to resolve issues raised in the motion for preliminary injunctive relief and the amended motion for preliminary injunctive relief through entry of this Court-approved Stipulation and will continue to litigate issues concerning liability and damages.

IT IS HEREBY STIPULATED AND AGREED by and between the parties as follows:

1. Eckert did not obtain informed consent from POM for its concurrent representation of Parx Casino in relation to the matters pending in the Pennsylvania Commonwealth Court at Nos. 418 M.D. 2018 and 503 M.D. 2018.

2. Eckert remains bound by Rules 1.7 and 1.9 of the Pennsylvania Rules of Professional Conduct and will not in the future represent any party adverse to POM consistent with Rules 1.7 and 1.9 of the Pennsylvania Rules of Professional Conduct.

3. Eckert will not communicate, directly or indirectly, with any defendant or any intervenor or proposed intervenor or counsel for any defendant or intervenor or proposed intervenor regarding the litigation matters pending at Nos. 418 M.D. 2018 and 503 M.D. 2018 in the Pennsylvania Commonwealth Court.

4. Eckert will not, directly or indirectly, assist, help, and/or communicate with Parx Casino or any affiliate of Parx Casino or counsel for any of them regarding the actions in Montgomery or Bucks County or any similar action. Eckert has withdrawn from representing Parx Casino in the actions filed on behalf of Parx Casino in Montgomery County and Bucks County, Pennsylvania against entities hosting POM skill games.

5. Eckert will not represent any party, directly or indirectly, in any capacity, including as counsel for any industry group or association, in any matter adverse to POM or any POM affiliate, including, but not limited to, POM of

Pennsylvania, LLC and Queen of Virginia Skill & Entertainment, LLC, that is directly or indirectly related to POM skill games. Nor will Eckert represent any party, directly or indirectly, in any capacity, in any legal proceeding against any entity that hosts or offers POM's skill games if or when POM's skill games are at issue.

6. Eckert will not on behalf of any client advocate, directly or indirectly, in any forum, including in any legislative, lobbying, government relations and/or public relations context, against the legality of electronic games of skill manufactured or distributed by POM or any POM affiliate, including but not limited to POM of Pennsylvania, LLC and Queen of Virginia Skill & Entertainment, LLC, or advocate, directly or indirectly, that POM games are not games of skill or are not games where skill predominates over chance.

7. Eckert will not communicate, directly or indirectly, with any government or law enforcement agency concerning the legality of POM skill games, the seizure of POM skill games or legislation concerning skill games.

8. The prohibitions in Paragraphs 2 through 7 of this Stipulation and Order shall continue to bind Eckert after this litigation ends. This Order shall constitute a stipulated permanent injunction.

9. Upon entry of this Stipulation as an Order of Court, this Stipulation shall resolve the issues raised in POM's motion for preliminary injunction (ECF

Nos. 12, 13) and POM's amended motion for preliminary injunction (ECF Nos. 157, 160). This Court shall retain jurisdiction over this matter for purposes of enforcing this Court-approved Stipulation.

10. Nothing contained herein shall be deemed a waiver of any other claims or defenses. All claims for monetary and punitive damages shall continue to be litigated in the regular course.

11. Nothing contained herein shall be deemed a waiver of the relief sought in the motion to compel discovery, motions for protective order, motions to quash and/or appeals relating to such motions. Those motions and appeals, if any, will be briefed and decided in the regular course.

Respectfully submitted,

/s/ Daniel T. Brier

Daniel T. Brier
Donna A. Walsh

Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, PA 18503
(570) 342-6100

Attorneys for Plaintiff,
Pace-O-Matic, Inc.

Dated: January 26, 2022

/s/ Robert S. Tintner

Abraham C. Reich
Robert S. Tintner

Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2090

Attorneys for Defendants,
Eckert Seamans Cherin & Mellott, LLC,
Mark S. Stewart and Kevin M. Skjoldal

SO ORDERED:

s/ Jennifer P. Wilson

Jennifer P. Wilson, U.S.D.J.